THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.12399 of 1994

Dated 18-01-2007

Between:
The Telangana Fishermen Central Co-operative Society Ltd. Bank Bund, Hyderabad rep. By its Managing Director.

..... PETITIONER

AND

The Deputy Commissioner of Labour (T.Cs) Hyderabad and others.
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.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.12399 of 1994

O R D E R:

The short question which arises for consideration in this writ petition is the validity of the order of the first respondent in Case No.SA/10/94 dated 06-06-1994 directing payment of compensation of Rs.31,680/- in lieu of reinstatement of the third respondent.

The first respondent held that since the third respondent was not paid any service compensation as required under Section 47(1) of the A.P.Shops and Establishments Act, 1988 (for short 'the Act') and was merely offered one month's wages, the termination order issued by the petitioner contravened the provisions of Section 47(1) of the Act. The first respondent, however, noted that since one of the two vehicles was condemned and the third respondent was the junior most driver, it was not possible to order reinstatement into service as the vehicle to which the employee was employed was condemned and sold. Taking into account, the total service of the third respondent as 10 years, and upon holding that if the petition had been allowed the third respondent would be entitled to work without being discharged from service, that he would have worked for 20 years and as the third respondent was discharged from service without any offer of service compensation, the first respondent held that principles of natural justice required that the third respondent be paid two years wages as compensation in lieu of reinstatement. The first respondent took into account the last drawn salary of the third respondent of Rs.1320/- and arrived at Rs.31,680/- as compensation in lieu of reinstatement i.e. wages for a period of two years in addition to the service compensation, which the third

respondent was entitled as per Section 47(3) of the Act.

Unlike Section 25-F of the Industrial Disputes Act, payment of service compensation under Section 47(1) of the Act is not a condition precedent for termination. A Full bench of this Court, in **K.V.Narasimha Rao v. The Labour Court**[1], held that service compensation under the A.P.Shops and Establishments Act was not a condition precedent and could be paid even after the employee's services had been terminated. The judgments under the Industrial Disputes Act ordain that failure to make payment of retrenchment compensation, prior to retrenchment of the workman, under Section 25-F of the Industrial Disputes Act being a condition precedent to his termination, the termination of the services of a workman was contrary to Section 25-F of the Industrial Disputes Act and was *ab initio void*. Since payment of service compensation under Section 47(1) of the Act is not a condition precedent for retrenchment, and can be paid subsequent to termination, the order of the first respondent, directing payment of compensation of two years wages in lieu of reinstatement, is required to be set aside.

Sri V.Viswanatham, learned counsel for the third respondent, would place reliance on **Krishna District Co-operative Marketing Society Limited, Vijayawada v. N. V.Purnachandra Rao**[2].

In **N. V.Purnachandra Rao**[2], the Supreme Court observed that Chapter V-A of the Industrial Disputes Act is not repugnant to the A.P.Shops and Establishments Act and would not prevail over the Industrial Disputes Act and in cases, where an employee was a 'workman' and the management is an 'industry' as defined in the Industrial

Disputes Act and the action taken by the management amounted to 'retrenchment,' then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Industrial Disputes Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities under sub-sections (1) and (3) of Section 41 of the A.P.Shops and Establishments Act, 1966.

In the case on hand, both the authorities have not examined the question as to whether the third respondent is a 'workman 'within the meaning of Section 2(s) of the Industrial Disputes Act and as to whether the petitioner herein is running an 'industry'. Since the matter was not examined, on the touchstone of Section 25-F of the Industrial Disputes Act, by both the authorities (respondents 1 and 2) the contentions raised, placing reliance on **N. V.Purnachandra Rao**[2] for the first time before this Court, cannot be examined since these questions cannot be raised for the first time in writ proceedings under Article 226 of the Constitution of India, that too in the writ petition filed by the employer. To the extent that the first respondent had directed payment of compensation of two years wages in lieu of reinstatement, the order of the first respondent is set aside. It is, however, made clear that the direction of the first respondent, for payment of service compensation under Section 47(3) of the Act, is upheld.

The Writ Petition is allowed in part. However, in the circumstances, without costs.

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18-01-2007

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[1] 1991(1) An.W.R. 1 (FB)

[2] 1987(4) SCC 99